

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Zachary Herman	Team: Squad #11	CCRB Case #: 201802644	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 04/03/2018 5:30 PM	Location of Incident: [REDACTED]	Precinct: 23	18 Mo. SOL 10/3/2019	EO SOL 10/3/2019	
Date/Time CV Reported Tue, 04/03/2018 6:50 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Tue, 04/03/2018 6:50 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. SGT Kevin Reyes	00225	937364	023 PCT
2. POM Sheldon Elliott	21027	958550	023 PCT
3. POM Julio Silva	25669	923180	023 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Julio Silva	Abuse: Outside of 1642 Lexington Avenue in Manhattan, Police Officer Julio Silva stopped § 87(2)(b) [REDACTED]	[REDACTED]
B.POM Sheldon Elliott	Abuse: Outside of 1642 Lexington Avenue in Manhattan, Police Officer Sheldon Elliott stopped § 87(2)(b) [REDACTED]	[REDACTED]
C.POM Sheldon Elliott	Abuse: Outside of 1642 Lexington Avenue in Manhattan, Police Officer Sheldon Elliott threatened to arrest § 87(2)(b) [REDACTED]	[REDACTED]
D.SGT Kevin Reyes	Abuse: Inside the 23rd Precinct Stationhouse, Sergeant Kevin Reyes did not process § 87(2)(b) [REDACTED]'s complaint regarding officers.	[REDACTED]

Case Summary

On April 3, 2018, § 87(2)(b) filed this complaint with the CCRB via the call processing system on behalf of herself and her son, § 87(2)(b).

On April 3, 2018, at 5:30pm, § 87(2)(b) was outside of a 7-Eleven convenience store located at 1642 Lexington Avenue in Manhattan. § 87(2)(b)'s friend, § 87(2)(b) an unidentified witness threw a snowball at him while § 87(2)(b) entered the store. § 87(2)(b) then threw a snowball at § 87(2)(b) and then attempted to enter the store. At that point, PO Silva stopped § 87(2)(b) by speaking to him and extending his arm when § 87(2)(b) attempted to leave the area. Police Officer Sheldon Elliott then moved to the area spoke to § 87(2)(b) for two minutes (**Allegations A and B: Abuse of Authority, § 87(2)(g)**). While speaking with the officers, § 87(2)(b) spat on the ground. PO Elliott then informed § 87(2)(b) that if he spat on the ground again in front of the officers, § 87(2)(b) would be taken to the stationhouse where he would have to be picked up by his mother (**Allegation C: Abuse of Authority, § 87(2)(g)**). After a two-minute conversation, § 87(2)(b) left the area in front of the store and returned home. On the same day, at approximately 6:30pm, § 87(2)(b) and § 87(2)(b) Briamge traveled to the 23rd Precinct stationhouse. § 87(2)(b) requested to file a CCRB complaint about her son's interaction with PO Silva and PO Elliott earlier in the day, which Sergeant Kevin Reyes is alleged to have refused to take (**Allegation D: Abuse of Authority, § 87(2)(g)**). Sgt. Reyes provided § 87(2)(b) the CCRB's phone number, which she used to contact the CCRB and file this complaint.

The CCRB obtained video footage for portions of the incident from the 7-Eleven convenience store where the incident took place.

Findings and Recommendations

Allegation (A) Abuse of Authority: Outside of 1642 Lexington Avenue in Manhattan, Police Officer Julio Silva stopped § 87(2)(b)

Allegation (B) Abuse of Authority: Outside of 1642 Lexington Avenue in Manhattan, Police Officer Sheldon Elliott stopped § 87(2)(b)

§ 87(2)(b) testified he was playing with his friend § 87(2)(b) outside of a 7-Eleven convenience store located at 1642 Lexington Avenue in Manhattan. § 87(2)(b) was unable to provide either § 87(2)(b)'s last name or any contact information for him. § 87(2)(b) threw a snowball at § 87(2)(b) as the latter was about to enter the store. He missed and the snowball struck the door of the store. § 87(2)(b) then proceeded to retaliate by throwing a snowball at § 87(2)(b). When § 87(2)(b) attempted to reenter the store, PO Silva grabbed or pushed § 87(2)(b) on his left upper arm before grabbing him by the front of his jacket. PO Elliott exited the store, and grabbed § 87(2)(b)'s upper arm (BR11).

PO Silva stated that he was inside of the 7-Eleven convenience store when he heard banging against the glass door. He turned to observe § 87(2)(b) and a Hispanic male child, whom he described as being approximately 12 years old, throwing snowballs or ice balls at the store's glass door. PO Silva exited the store and observed § 87(2)(b) making a snowball, which

PO Silva ordered him to drop. § 87(2)(b) did so, but began to curse at PO Silva, including multiple uses of the n-word. PO Elliott exited the store and spoke to § 87(2)(b) regarding his conduct towards police officers. At one point during PO Silva's interaction with § 87(2)(b) he placed his arm in § 87(2)(b)'s path when it appeared to PO Silva as though § 87(2)(b) was attempting to walk away from the officers. PO Silva moved his arm in front of § 87(2)(b) so that he and PO Elliott could finish talking to § 87(2)(b) about his behavior(BR17).

PO Elliott was at the counter of the 7-Eleven Convenience Store when he heard several seconds of banging. PO Elliott observed a ball being thrown against the store window. He then observed PO Silva speaking to § 87(2)(b). As he approached the conversation, he heard § 87(2)(b) say "Oh my nigga, what are you talking about, get the fuck out of my way" to PO Silva. PO Elliott told § 87(2)(b) that he should not be using the n-word towards anyone, and that PO Silva was old enough to be his father (BR15).



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Video from IA#79: At 00:09, a young man throws what appears to be a snow or an ice ball at § 87(2)(b). The projectile appears to separate into two pieces at 00:10. One of these pieces appears to strike § 87(2)(b) on his left arm. When the snow or ice ball strikes § 87(2)(b) a young female is directly next to him since they were both attempting to enter the store at the same time. § 87(2)(b) appears to briefly make contact with this individual while reacting to being struck by the snow or ice ball thrown by his friend. It is unclear from the footage where the other piece of the snow or ice ball strikes. § 87(2)(b) then briefly enters the store. PO Silva can be seen facing the door of the store while holding what appears to be a cup of coffee. From PO Silva's vantage point, he would have had the ability to see of what transpires throughout the entire sequence of the action. At 00:14, § 87(2)(b) exits the frame of the video to the right. PO Silva can be observed looking in the direction § 87(2)(b) exits. At 00:32 seconds, PO Silva exits the store while holding the cup, and intercepts § 87(2)(b) at 00:33 when he latter reenters the frame. Between 00:34 and 00:52, § 87(2)(b) cannot be observed. At 00:55, § 87(2)(b) attempts to re-enter the store, and is obstructed by PO Elliott. He then backs away from the door. § 87(2)(b)'s body is blocked by PO Elliott and PO Silva throughout most of the rest of the duration of the footage. At 02:24, the officers return to the store, and move away from § 87(2)(b) (BR20).

According to New York State Penal Law § 240.20, a person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof: Subsection 7: He creates a hazardous or physically offensive condition by any act which serves no legitimate purpose (BR31). Per the New York Police Department Patrol Guide 215-09, a juvenile delinquent is defined as a person over seven and less than sixteen years of age who commits an act, which if committed by an adult, would constitute a crime. Per the New York Police Department Patrol Guide 208-01, a uniformed member of service may make an arrest without a warrant for a petty offense in his presence (BR28, BR30).

§ 87(2)(b) testified that § 87(2)(b) threw a snowball that struck him. Video footage shows that as the projectile was thrown, it appears to have split in the air with one section clearly striking § 87(2)(b) on his left arm. § 87(2)(g) § 87(2)(b) bumps into a young lady who was entering the store at the same time. It is unclear if the other section struck the glass door of the store. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (C) Abuse of Authority: Outside of 1642 Lexington Avenue in Manhattan, Police Officer Sheldon Elliott threatened to arrest § 87(2)(b)

While speaking to PO Elliott, § 87(2)(b) turned his head and spit on the ground. PO Elliott told § 87(2)(b) that if he spit on the ground again, PO Elliott would bring him to the stationhouse and wait for his mother to pick him up (BR11).

Per New York City Administrative Code 16-118 (1)(b), no person shall spit upon a sidewalk of a street. Per New York City Administrative Code 16-118(8), provided the violation of subdivision 1 of this section...shall constitute an offense punishable by a fine of not less than fifty dollars nor more than two hundred and fifty dollars, or by imprisonment not to exceed one day (BR27). Per the New York Police Department Patrol Guide 215-09, a juvenile delinquent is defined as a person over seven and less than sixteen years of age who commits an act, which if committed by an adult, would constitute a crime. Per the New York Police Department Patrol Guide 208-01, a uniformed member of service may make an arrest without a warrant for a petty offense in his presence (BR28, BR30).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (D) Abuse of Authority: Inside the 23rd Precinct Stationhouse, Sergeant Kevin Reyes did not process § 87(2)(b)'s complaint regarding officers.

§ 87(2)(b) testified that she and § 87(2)(b) traveled to the 23rd Precinct stationhouse to file a CCRB complaint about police officers. § 87(2)(b) observed PO Silva inside the stationhouse. When § 87(2)(b) pointed out PO Silva in the stationhouse, Sgt. Reyes came to speak to § 87(2)(b). At the same time, PO Silva allegedly spoke to § 87(2)(b) and § 87(2)(b). § 87(2)(b) stated she became upset upon allegedly speaking to PO Silva, and Sgt.

Reyes ordered PO Silva to leave the area. § 87(2)(b) then requested to make a complaint against the officers who had allegedly stopped § 87(2)(b). Sgt. Reyes allegedly informed her that she could not make a complaint at the stationhouse, and provided § 87(2)(b) with the CCRB's phone number. § 87(2)(b) requested to make a complaint before four and five times (BR12).

§ 87(2)(b) traveled to the 23rd Precinct stationhouse in the company of his mother, § 87(2)(b). When they entered the stationhouse, § 87(2)(b) observed PO Elliott inside. PO Elliott recognized § 87(2)(b) and Sgt. Reyes spoke to PO Elliott regarding the incident. PO Elliott allegedly denied having done anything to § 87(2)(b). During his testimony, § 87(2)(b) did not discuss whether § 87(2)(b) requested to file a CCRB complaint (BR11).

Sgt. Reyes testified he was assigned as the desk sergeant when § 87(2)(b) and § 87(2)(b) entered the 23rd Precinct Stationhouse. There were multiple people in the waiting room, who were waiting to file complaints. § 87(2)(b) was agitated, speaking with a raised voice and waving her arms. Upon observing § 87(2)(b)'s agitation with the person she was speaking to, Sgt. Reyes approached the waiting area to investigate. § 87(2)(b) informed Sgt. Reyes of what had occurred, and requested to file a CCRB complaint. Sgt. Reyes informed § 87(2)(b) that he was willing to process her complaint, but that other people were waiting before her, and that she would have to wait. § 87(2)(b) responded that she wished to file a complaint immediately, and requested the CCRB's phone number. Sgt. Reyes provided the CCRB's phone number by point it out on the Stationhouse wall. § 87(2)(b) made a phone call while standing in the waiting room. (BR16).

PO Elliott observed § 87(2)(b) and § 87(2)(b) in the stationhouse while he was present in the stationhouse. He approached § 87(2)(b) and § 87(2)(b). § 87(2)(b) stated "that's him, that's the one" in regard to PO Elliott. § 87(2)(b) then began to yell at PO Elliott. PO Elliott asked § 87(2)(b) what was going on, while § 87(2)(b) allegedly stated "he did not touch me" in regard to PO Elliott. Sgt. Reyes then intervened, and ordered PO Elliott to leave the scene. PO Elliott did not hear § 87(2)(b) request to file a CCRB complaint (BR15).

PO Silva testified that he did not observe § 87(2)(b) or § 87(2)(b) inside the 23rd Precinct Stationhouse (BR17).

§ 87(2)(b) testified that she requested to file a CCRB complaint between four and five times to Sgt. Reyes. She further testified that Sgt. Reyes informed her that she could not file a complaint at the stationhouse, but provided her the CCRB's phone number. Sgt. Reyes claims that he informed § 87(2)(b) he would process her complaint, but that she would have to wait, as other people were waiting to file complaints before her. Sgt. Reyes claimed § 87(2)(b) demanded to file the complaint immediately, and he provided § 87(2)(b) with the CCRB's phone number by directing her attention to a phone number on the wall. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

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§ 87(2)(b)

Civilian and Officer CCRB Histories

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- This is the first CCRB complaint that § 87(2)(b) has been a party to (BR19).
- This is the first CCRB complaint § 87(2)(b) has been a party to (BR18).
- PO Elliott has been a member of service for two years and has been a subject in four CCRB complaints and five allegations, none of which were substantiated. § 87(2)(g)
- PO Silva has been a member of service for nineteen years and has been a subject in eleven CCRB complaints and 21 allegations, none of which have been substantiated. § 87(2)(g)
- Sgt. Reyes has been a member of service for thirteen years and has been a subject in three CCRB complaints and five allegations, none of which have been substantiated. § 87(2)(g)

Mediation, Civil and Criminal Histories

- Mediation offered and rejected by § 87(2)(b)
- A request was filed with the New York City Office of the Comptroller for any Notice of Claim filed in regard to this incident on June 19, 2018. The results of the search were received on June 26, 2018. No notice of claim has been filed in regard to this case. (BR26).
- § 87(2)(b) (BR25).

Squad No.: 15

Investigator:	_____ Signature	<u>Investigator Zachary Herman</u> Print Title & Name	_____ Date
Squad Leader:	_____ Signature	_____ Print Title & Name	_____ Date
Reviewer:	_____ Signature	_____ Print Title & Name	_____ Date